

AMENDED IN ASSEMBLY AUGUST 2, 2010
AMENDED IN ASSEMBLY JUNE 28, 2010
AMENDED IN ASSEMBLY FEBRUARY 23, 2010
AMENDED IN ASSEMBLY JULY 6, 2009
AMENDED IN SENATE MAY 28, 2009
AMENDED IN SENATE MAY 20, 2009

SENATE BILL

No. 362

Introduced by Senator Florez

February 25, 2009

An act to add Section 47060 to the Food and Agricultural Code, ~~and to add Sections 17158 and 24316 to the Revenue and Taxation Code,~~ relating to agriculture.

LEGISLATIVE COUNSEL'S DIGEST

SB 362, as amended, Florez. Agriculture: victory garden ~~growers:~~ ~~taxes: exclusion:~~ *growers.*

Existing law provides for the direct marketing of agricultural produce, including through certified farmers' markets, field retail stands, or farm stands, subject to specified conditions.

This bill would authorize a victory garden grower, as defined, that files a notice with, and pays a \$50 filing fee to, the county agricultural commissioner to sell fruits, nuts, or vegetables that he or she grows in his or her garden directly to the public, including at a farmers' market, or to a retailer or distributor or others, within a 15-mile radius from the garden. The license would be effective upon the filing of the notice and payment of the fee and would be renewable annually. ~~A licensed victory~~

~~garden grower would be exempt from certain state laws and local ordinances, as specified. A licensed victory garden grower would be subject to applicable state and local laws and ordinances, except as provided.~~ Because this bill would impose new duties on local agencies, the bill would impose a state-mandated local program.

A violation of any of these provisions would be a misdemeanor. Because this bill would create a new crime, it would impose a state-mandated local program.

~~The Personal Income Tax Law and the Corporation Tax Law provide for various exclusions from gross income for the purposes of the taxes imposed by those laws.~~

~~This bill would, for purposes of computing personal income and corporation taxes, exclude from gross income any amounts received from the sale of fruits, nuts, or vegetables grown by a licensed victory garden grower pursuant to the license.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 47060 is added to the Food and
- 2 Agricultural Code, to read:
- 3 47060. (a) Notwithstanding any other law, a person licensed
- 4 as a victory garden grower may, within a 15-mile radius from the
- 5 garden, sell fresh fruits, nuts, or vegetables that he or she grows
- 6 in his or her garden directly to the public, including at a farmers'
- 7 market, or to a retailer or distributor or others, including, but not
- 8 limited to, a grocer, market, school, or restaurant.
- 9 (b) For purposes of this section, a "victory garden grower"
- 10 means a person in this state who owns or leases a garden of a
- 11 reasonable size, not exceeding one acre in size, and grows fruits,

1 nuts, or vegetables, or any combination of these foods, in that
2 garden. The county agricultural commissioner may determine rules
3 or guidelines of general applicability addressing what is a
4 reasonable size in his or her county under the circumstances.
5 However, no victory garden grower shall be required to obtain the
6 permission of the county agricultural commissioner as a condition
7 of obtaining or maintaining a victory garden grower license, except
8 for the notice and fee as provided in subdivision (c).

9 (c) (1) In order to be licensed as a victory garden grower, the
10 grower shall file a notice, not exceeding one page in length, and
11 otherwise in a form as prescribed by the county agricultural
12 commissioner, along with a fifty-dollar (\$50) filing fee, with the
13 county agricultural commissioner in the county in which the garden
14 is located. The license shall be effective upon the filing of the
15 notice and payment of the fee, and may be renewed annually by
16 filing another notice and paying the fifty-dollar (\$50) filing fee.

17 (2) A photocopy of the notice, along with proof of payment of
18 the filing fee, which can be a photocopy of a check or money order
19 or other payment form, shall be prima facie evidence of the victory
20 garden grower's licenseholder status pursuant to this section, and
21 all persons shall be entitled to rely on that evidence. However, a
22 county agricultural commissioner may choose to issue, from time
23 to time, receipts or certificates evidencing the victory garden
24 grower's licenseholder status, and that receipt or certificate, if and
25 when issued, shall also be prima facie evidence of the victory
26 garden grower's licenseholder status pursuant to this section.

27 ~~(d) (1) A licensed victory garden grower shall be exempt from~~
28 ~~any state law and local county and city ordinance that requires a~~
29 ~~license or permit to conduct the activities of a victory garden~~
30 ~~grower, or that prohibits these activities, including, but not limited~~
31 ~~to, local zoning and business license ordinances. However, except~~
32 ~~as provided in subdivision (c), a licensed victory garden grower~~
33 ~~shall be subject to all other applicable state and local laws relating~~
34 ~~to, but not limited to, health and safety, noise, and prohibited~~
35 ~~poisons.~~

36 ~~(2) The Legislature finds and declares that the encouragement~~
37 ~~and development of community-based food gardens to serve their~~
38 ~~local communities with locally grown foods is a matter of statewide~~
39 ~~interest and concern. It is, therefore, the intent of the Legislature~~

1 ~~that this section shall supersede all conflicting local laws and shall~~
2 ~~apply in charter cities.~~

3 *(d) Except as provided in subdivision (e), a licensed victory*
4 *garden grower shall be subject to all applicable state and local*
5 *laws and ordinances.*

6 *(e) The agricultural produce sold by a licensed victory garden*
7 *grower shall be exempt from size, standard pack, container, and*
8 *labeling requirements of state law. However, a county agricultural*
9 *commissioner may issue regulations or guidelines of general*
10 *applicability providing for point-of-sale identification of the*
11 *produce of a county's victory garden grower as "____ County*
12 *Victory Garden Produce" or "Victory Garden produce of ____*
13 *County," or similar wording, and the identification regulations or*
14 *guidelines shall not impose any material or unreasonable cost or*
15 *burden upon a victory garden grower. In addition to the*
16 *identification, a victory garden grower may add an optional*
17 *additional geographic statement of origin for any victory garden*
18 *produce, which reasonably identifies, with customary publicly*
19 *recognized names, the neighborhood or microlocality of the victory*
20 *garden. Any such neighborhood or microlocality shall conform*
21 *reasonably closely with the 15-mile radius sale area applicable to*
22 *the victory garden grower as provided in this section.*

23 ~~SEC. 2. Section 17158 is added to the Revenue and Taxation~~
24 ~~Code, to read:~~

25 ~~17158. Gross income shall not include any amount received~~
26 ~~during the taxable year by a person licensed pursuant to Section~~
27 ~~47060 of the Food and Agricultural Code from the sale of fruits,~~
28 ~~nuts, or vegetables grown pursuant to the license.~~

29 ~~SEC. 3. Section 24316 is added to the Revenue and Taxation~~
30 ~~Code, to read:~~

31 ~~24316. Gross income shall not include any amount received~~
32 ~~during the taxable year by a person licensed pursuant to Section~~
33 ~~47060 of the Food and Agricultural Code from the sale of fruits,~~
34 ~~nuts, or vegetables grown pursuant to the license.~~

35 ~~SEC. 4.~~

36 *SEC. 2. No reimbursement is required by this act pursuant to*
37 *Section 6 of Article XIII B of the California Constitution for certain*
38 *costs that may be incurred by a local agency or school district*
39 *because, in that regard, this act creates a new crime or infraction,*
40 *eliminates a crime or infraction, or changes the penalty for a crime*

1 or infraction, within the meaning of Section 17556 of the
2 Government Code, or changes the definition of a crime within the
3 meaning of Section 6 of Article XIII B of the California
4 Constitution.

5 However, if the Commission on State Mandates determines that
6 this act contains other costs mandated by the state, reimbursement
7 to local agencies and school districts for those costs shall be made
8 pursuant to Part 7 (commencing with Section 17500) of Division
9 4 of Title 2 of the Government Code.

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